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92-668

Supreme Court, U.S.
FILED
OCT 13 1992
OFFICE OF THE CLERK

Number _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

IN RE: MARQUAM INVESTMENT CORPORATION,

Debtor,

SUZAN BREWER,

Plaintiff-appellee,

vs

ERWIN & ERWIN, Professional Corporation,

Defendant-appellant.

APPENDIX TO PETITION FOR CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS

VOLUME I

Warde H. Erwin
Counsel of Record for Defendant-appellant

Address: 2110 SW Jefferson Street
Suite 100
Portland, Oregon 97201
Phone (503 226 4525

Charles C. Erwin
Additional Counsel
Address: 2110 SW Jefferson Street Ste 100
Portland, Oregon 97201
Phone (503) 226 4525

Number _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

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Debtor,

SUZAN BREWER,

Plaintiff-appellee,

vs

ERWIN & ERWIN, Professional Corporation,

Defendant-appellant.

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RE: PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

Warde H. Erwin
Counsel of Record for Defendant-appellant

Address: 2110 SW Jefferson Street
Suite 100
Portland, Oregon 97201
Phone (503 226 4525

Charles C. Erwin
Additional Counsel
Address: 2110 SW Jefferson Street
Portland, Oregon 97201
Phone (503) 226 4525

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Number _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

IN RE: MARQUAM INVESTMENT CORPORATION,
Debtor,

SUZAN BREWER,
Plaintiff-appellee,

vs.

ERWIN & ERWIN, Professional Corporation,
Defendant-appellant.

ORAL OPINION OF

HONORABLE HENRY L. HESS,

UNITED STATES BANKRUPTCY JUDGE,

April 6, 1985

Warde H. Erwin
Counsel of Record for Defendant-appellant
Address: Suite 100
2110 SW Jefferson Street
Portland, Oregon 97201

Charles C. Erwin
Additional Counsel
Address: Suite 100
2110 SW Jefferson Street
Portland, Oregon 97201

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THE HONORABLE HENRY L. HESS

April 6, 1985

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OPINION OF

THE HONORABLE L. HENRY

April 6, 1985

THE COURT: Well, we have to remember that the issue in this case is whether the legal services rendered by the professional corporation for Marquam Investment were intended to be -- were intended by the Marquam Investment and by the professional corporation to be compensated when funds became available or were intended to be performed without compensation. That is the issue that we are facing now.

We are not concerned with any conduct on the part of Marquam or the professional corporation which might call for equitable subordination of the claim of the professional corporation. Again, we are not -- we are also not concerned with whether the proof of claim represents a reasonable sum for the services

that were performed. The sole issue is whether or not it was intended that these services be paid for or whether they were donated.

There is some evidence that would indicate a lack of an intent that the services be compensated. No billing was every submitted by Marquam to the professional corporation or by the professional corporation. Neither the books of Marquam nor the professional corporation reflect an accounts receivable from the -- or owing to the professional corporation or an accounts payable by Marquam. In the action brought to avoid the conveyance by Marquam to Squaw Creek Construction, no mention was made of attorney's fees owing. I might say, I'm only presenting the argument on one side, not presenting the counter-argument in regard to these matters.

An account payable was not shown on

the balance sheet of Marquam. It was indicated that it would not have been a good tax move for Marquam to have paid to -- or not a good tax move so far as the professional corporation is concerned for Marquam to pay for attorney's fees because at that time Marquam was not a taxpaying unit -- had no income and therefore no -- nothing to write off the expense of attorney fees against, whereas the professional corporation would have had to report that as income, which would have resulted in taxation.

Then, it was argued that in the action involving punitive damages, that it might have been advantageous to Marquam to show in relation to its financial ability to pay punitive damages that it owed an account for attorney fees, and then in a fraudulent conveyance case it is argued that that conveyance to Squaw Creek was not recorded until after

the verdict had been entered, and asserted that there was no value given to that.

In the fraudulent conveyance case, it was not necessary to show that the conveyance was fraudulent because there was no consideration because it appeared that there would be consideration for the conveyance; that the consideration being on the part of Martin, that he would contribute his architectural service to this joint venture, but it doesn't -- again, the joint venture agreement has to do with the relationship between Marquam and Martin. It doesn't -- it is not particularly relevant to show the relationship between Marquam and the P.C.

It is argued that somehow the fact that for this condominium development to proceed, it was necessary that seven conditions be performed, and that is argued to show the whole condominium development

thing was a sham to defeat the claim of Brewer.

Then, it was argued that the joint venture agreement did call for legal services. As I understand the joint venture agreement, it indicated that Warde Erwin or Marquam would not charge for legal expenses in the condominium development. It also indicated that Martin would not charge for architectural service, but, again, that doesn't determine whether or not Marquam had a liability to the P.C. for the legal services; it was only that Marquam would not claim reimbursement for those legal services out of the condominium development. It was argued that there was no legal work done after the judgment -- when the judgment was first entered in favor of Brewer, but, of course, the letter of January 1st of '82 shows that

financing was still being sought at that time.

On the other hand, there's evidence to indicate that services were to be compensated first. All we have is testimony of Charles Erwin that such was the intent. We have the fact that neither Charles Erwin nor Mr. Lamb, who are members of the professional corporation, were not stockholders or officers of Marquam and therefore would not derive any benefit from any increase in the assets held by Marquam. The fact that Mr. Erwin spent a great deal of his time over a period of several years devoted to the legal problems of Marquam doesn't seem reasonable to the Court that Mr. Erwin would do that -- would merely contribute his services without compensation when he is not -- has no relationship or no interest in Marquam.

Mr. Erwin testified that during a

part of that period his income was so low that he was required to borrow funds. That doesn't seem to indicate that -- he wouldn't be donating services to a corporation in which he had no financial interest.

Also it appears that there would have been no good purpose served, necessarily, in the professional corporation submitting a bill to Marquam when it was known that Marquam had no funds from which those services could be paid, and submitting such a bill would have just been an effort in futility. Whether or not the attorney fees were mentioned or an account for attorney fees were mentioned in those two lawsuits were a matter of tactical trial tactics and not necessarily evidence that there was no such agreement when the legal services would be compensated. Also it appears that much of the legal services rendered

to Marquam had been rendered prior to the time of the entry into the joint venture agreement.

The importance, it appears, is that that seemed to be a source from which the legal bill of the professional corporation could be paid; that is, from the monies that would be received by Marquam or Mr. Warde Erwin from the development of the condominium appeared, at that time, to be a source for payment of the attorney fees. It isn't important that that finally came to fruition. What was important was what the parties believed at that time. It would seem obvious that Martin would not have contributed his services to the condominium had he felt that this was simply a sham to defeat Brewer's claim and that there was no opportunity for him to ever recover for his services. That would seem to indicate that it was not a sham operation

and that at that time -- at the time of the joint venture agreement -- that appeared to be the only way in which services of the P.C. could be compensated would be if this condominium were developed.

Also, the professional corporation was renting property from Marquam and had for many years made payment of the mortgage of Marquam and credited that against the rent and had credited the balance against the legal fees owing. One of the very significant items of evidence is that time records were kept of the legal services.

If it was understood that there was never to be any payment for those legal services, then it would appear there would be no necessity for keeping time records. So the fact that time records were kept would indicate an understanding that those services were to be paid for.

Without arguing each of those points that I have mentioned the arguments on both sides -- the Court is convinced that the evidence show that the services performed by the professional corporation were not intended to be donated to Marquam but were intended that they would be paid by Marquam when funds were available by Marquam to make payment of those fees, and, therefore, the Court finds that the claim for attorney fees is a valid claim, and the only question then remaining is whether or not the doctrine of equitable subordination will apply to the claim and whether or not the amount of the claim is reasonable.

MR. ROBINOWITZ: I would like to clarify one thing on your findings, Your Honor.

THE COURT: Yes?

MR. ROBINOWITZ: You are making a finding, then, that the work that was

done by the P.C. in regard to the realty development and the administrative procedures and the Brewer versus Abraham case, that all of the work that was done on the condominium project, then, was intended to be compensated?

THE COURT: To the professional corporation.

MR. ROBINOWITZ: To the professional corporation, and that was going to be compensated by Marquam Investment?

THE COURT: Yes.

MR. ROBINOWITZ: Okay. I just wanted to clarify that that is your finding.

THE COURT: I'll ask Mr. Erwin to submit an order to that effect.

MR. C. ERWIN: All right.

THE COURT: Court is in recess.

(Whereupon the hearing was concluded.)

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

I, JULIE COLLING, a Notary Public for Oregon, hereby certify that, pursuant to stipulation of Counsel for the respective parties hereinabove set forth, the parties personally appeared before me at the time and place set forth int he caption herein; that at said time and place I reported in stenotype all testimony adduced and other oral procedings had in the foregoing matter; that therefore my notes were reduced to typewriting under my direction; and that the foregoing transcript, pages 1 to 201, inclusive, constitutes a full, true and correct record of such testimony adduced and oral proceedings had and of the whole thereof.

WITNESS my hand and notarial

seal at Portland, Oregon, this 19th day of January, 1989.

/s/ Julie Colling

JULIE COLLING
Notary Public for Oregon
My Commission expires: 8/28/91

Charles C. Erwin
Erwin & Erwin, a
Professional Corporation
3323 SW Harbor Drive
Portand, Oregon 97201
Telephone: (503) 226 4525

THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re	)	
	)	
MARQUAM INVESTMENT CORPORATION,	)	No. 383 014888
	)	
Debtor,	)	JUDGMENT
	)	
	)	
BREWER, SUZAN,	)	
	)	
Objector,	)	
	)	
v.	)	
	)	
ERWIN & ERWIN, a Professional Corporation,	)	
	)	
Creditor.	)	
	)	

This matter coming on for trial as a contested case, and the objector, Suzan Brewer, and creditor, Erwin & Erwin, a Professional Corporation, having offered testimony, the court having made findings on the record, and the Trustee having

appeared by his attorney John Durkheimer, and consented and authorized objector, Suzan Brewer, to present this matter.

THE COURT NOW ORDERS that the claims of Erwin & Erwin, Professional Corporation, are allowed and declared valid, pursuant to 11 USC 502. The second of such claim shall be deferred for further consideration by the court.

Date: May 9, 1985

/s/ Henry L. Hess, Jr.

JUDGE HENRY L. HESS, JR.

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED
MAR 25 1988

Terence H. Dunn, Clerk
BY CW DEPUTY

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re	)	Case No.
	)	383-01488-H11
MARQUAM INVESTMENT CORP.,	)	ORDER ALLOWING
	)	CLAIM OF ERWIN
Debtor.	)	& ERWIN

IT IS HEREBY ORDERED that the claim of Erwin & Erwin, P.C., is allowed as a general unsecured claim in the amount of $120,000.

Dated this 24th day of March, 1988.

/s/Henry L. Hess, Jr.
Henry L. Hess, Jr.
Bankruptcy Judge

cc: Charles Erwin
Lawrence Erwin
John Durkheimer
Charles Robinowitz

1-ORDER ALLOWING CLAIM OF ERWIN & ERWIN

Number _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

IN RE: MARQUAM INVESTMENT CORPORATION,
Debtor,

SUZAN BREWER,
Plaintiff-appellee,

vs.

ERWIN & ERWIN, Professional Corporation,
Defendant-appellant.

MOTION TO SEVER APPEAL AND

AFFIDAVIT OF CHARLES ROBINOWITZ,

ATTORNEY FOR OBJECTOR-APPELLANMT

Warde H. Erwin
Counsel of Record for Defendant-appellant

Address: 2110 SW Jefferson Street
Portland, Oregon 97201

Charles C. Erwin
Additional Counsel
Address: 2110 SW Jefferson Street
Portland, Oregon 97201

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MOTION TO SEVER APPEAL

(OBJECTOR-APPELLANT)

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I hereby certify that the foregoing is a complete and exact copy of the original thereof.
Charles Robinowitz
/s/ by B H Camp
Attorney for Appellant

CHARLES ROBINOWITZ
1211 S.W. Fifth, Suite 2962
Portland, OR 503/226-1464
Attorney for Appellants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re MARQUAM INVESTMENT CORP., Debtor.	No. Bankr. Ct. No. 383-01488-H11
JOHN B. FRANZWA, INC. Plaintiff/Appellant, -vs- LAVELLE MULLENNEX, WARDE H. ERWIN, and ERWIN & ERWIN, P.C., Defendants/Respondents	Adversary No. 85-0131
SUZAN BREWER, Objector/Appellant, -vs- ERWIN & ERWIN, P.C., Creditor/Respondent.	MOTION TO SEVER APPEAL (Request for Oral Argument)

Appellants move the court for an Order severing the issues in the above-

entitled appeals so that the court will decide first whether Erwin & Erwin, P.C., intend to charge any legal fees to the debtor.

This motion is based on the affidavit of Charles Robinowitz, which is attached.

/s/ Charles Robinowitz

CHARLES ROBINOWITZ

Attorney for Appellants

CHARLES ROBINOWITZ
1211 S.W. Fifth, Suite 2962
Portland, OR 503/226-1464
Attorney for Appellants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re	
MARQUAM INVESTMENT CORP.,	No.
Debtor.	Bankr. Ct. No. 383-01488-H11
JOHN B. FRANZWA, INC. Plaintiff/Appellant, -vs- LAVELLE MULLENNEX, WARDE H. ERWIN, and ERWIN & ERWIN, P.C., Defendants/Respondents	Adversary No. 85-0131
SUZAN BREWER, Objector/Appellant, -vs- ERWIN & ERWIN, P.C., Creditor/Respondent.	AFFIDAVIT OF CHARLES HOROWITZ

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

I, CHARLES ROBINOWITZ, being first duly sworn, do state:

I am the attorney for Suzan Brewer and the Trustee in the above-entitled

appeals. I have represented Suzan Brewer in claims against Marquam Investment Corporation, Warde H. Erwin and Lavelle Mullennex since February 1980, including two appeals to the Oregon Court of Appeals and extensive bankruptcy hearings since May 1983.

The bankruptcy proceeding was essentially a battle between Brewer and the Erwin group for the limited assets of Marquam Investment Corporation. Brewer is a judgment creditor in the Oregon state courts who has an unsatisfied judgment against Marquam for $75,000 punitive damages, $2,880 statutory damages and $1,500 in attorney's fees plus interest from June 1980. Marquam Investment Corporation is an Oregon corporation whose only assets are several real estate parcels in Portland, one of which includes a building housing the law of offices of Erwin & Erwin, P.C. The total

value of Marquam's assets is approximately $170,000 based upon expert testimony in the bankruptcy proceedings.

The Erwin group consists of Warde Erwin, the majority shareholder in Marquam, Lavelle Mullennex, his longtime legal secretary and the only other shareholder in Marquam, Lawrence Erwin, the attorney for Marquam in the bankruptcy proceeding, a former director of Marquam and a son of Warde Erwin, and Charles Erwin, a son of Warde Erwin and a former director of Marquam, who represented Marquam in several Brewer cases and who together with Warde Erwin comprises Erwin & Erwin, P.C.

Erwin & Erwin filed a claim in the bankruptcy court for $120,000 in legal fees, which the bankruptcy court eventually allowed in full. Brewer and the trustee objected to this fee and there were six hearings regarding it. Two

hearings in May 1985 concerned the segregated issue of whether Erwin & Erwin intended to charge any fee to Marquam for their services. The court found in favor of Erwin & Erwin.

Brewer filed a motion for an interlocutory appeal to this court in July 1985. This court used its discretion to deny the appeal on the basis that other rulings by the bankruptcy court may make the issue moot. In 1987 there were four additional hearings on the amount of Erwin & Erwin's fees, and the court allowed the full amount of $120,000. The bankruptcy court also denied a claim by the trustee to subordinate this claim to Brewer's judgement.

If this court reverses the bankruptcy court on its initial finding that Erwin & Erwin intended to charge Marquam for its services, it would not have to decide the issues involved on the amount,

and Brewer and the trustee would not have to order approximately 20 additional hours of testimony and prepare additional lengthy briefs on multiple issues. A decision by this court reversing the bankruptcy court in this regard would also require an automatic reversal and remand of two other decisions by the bankruptcy court. The confirmation plan would be set aside because the essence of the plan discharged the unsatisfied Brewer judgment and awarded over 90 percent of the corporate assets to Erwin & Erwin, based on its #$120,000 claim. The claim for subordination would also be moot.

The bankruptcy court also disallowed a claim by the trustee for $13,056.73 against Erwin & Erwin under its lease because it held that Erwin & Erwin's fees were a setoff against its fees of $120,000. If the fees are disallowed,

Erwin & Erwin would owe this amount to the estate as well as attorney's fees to the trustee.

I believe there is a strong likelihood that Brewer and the trustee will prevail on the question of whether Erwin & Erwin ever intended to charge any fee for legal services to Maraquam, and additional transcripts and briefs on the amount of a fee will not be necessary for the following reasons:

1. There is no written document of any kind mentioning, alluding to or inferring any fee to be paid to Erwin & Erwin;
2. Marquam had no cash or other assets to pay any fee;
3. All financial statements of Marquam prior to the bankruptcy omit any debt to Erwin & Erwin for fees;
4. Payment of any fee by Marquam to

Erwin & Erwin would have transferred a long term capital investment from Warde Erwin and Lavelle Mullennex to taxable current income to Erwin & Erwin, which would have been very unsound tax planning;

5. There were no bills to Marquam over a period of more than seven years and no payments;

6. There was no testimony of outsiders to support an intent to charge a fee; and

7. There were two court trials in 1980 and 1982 involving Brewer and Marquam which concerned the finances of Marquam, and the principals of Marquam never mentioned the existence of any debt to Erwin & Erwin, much less one which would have bankrupted the corporation.

If Brewer and the trustee prevail on this issue, it will shorten considerably the record before this court and the issues it will have to decide.

/s/ Charles Robinowitz

CHARLES ROBINOWITZ

SUBSCRIBED AND SWORN TO before me on this 27th day of April, 1988.

/s/ Beverly H. Camp

NOTARY PUBLIC for Oregon

My Commission Expires: 7-15-89

I hereby certify that the foregoing is a complete and exact copy of the original thereof.
Charles Robinowitz
/s/ by B H Camp
Attorney for Appellant

CHARLES ROBINOWITZ
1211 S.W. Fifth, Suite 2962
Portland, OR 503/226-1464
Attorney for Appellants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re	
MARQUAM INVESTMENT CORP.,	No.
Debtor.	Bankr. Ct. No. 383-01488-H11
JOHN B. FRANZWA, INC. Plaintiff/Appellant, -vs- LAVELLE MULLENNEX, WARDE H. ERWIN, and ERWIN & ERWIN, P.C., Defendants/Respondents	Adversary No. 85-0131
SUZAN BREWER, Objector/Appellant, -vs- ERWIN & ERWIN, P.C., Creditor/Respondent.	

IT IS HEREBY ORDERED that:

1. The appellants' motion to sever

is granted, and the appellants shall file the transcript on the issue of whether Erwin & Erwin, P.C., intended to charge any legal fees to the debtor by July 1, 1988. The bankruptcy clerk shall then schedule the filing of briefs on that issue; and

2. The appellants' brief on the issue of attorney's fees and costs of the Law Office of Lawrence W. Erwin, P.C., shall be filed on June 22, 1988,s and the reply brief is due August 5, 1988.

DATED this ____ day of June, 1988.

JAMES M. REDDEN
U. S. DISTRICT COURT JUDGE

Submitted by:

CHARLES ROBINOWITZ
Attorney for Appellants

MAR 8 3:05 PM '90
Clerk, U.S. District
Court, District of
Oregon
By _____

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In re MARQUAM INVESTMENT CORP., Debtor.	Civil No. 88-0915-PA Bankruptcy No. 383-01488-H11
SUZAN BREWER, Objector/Appellant, -vs- ERWIN & ERWIN, P.C., Creditor/Respondent.	ORDER

REDDEN, J.

The bankruptcy court's orders allowing Erwin's claim for attorney's fees are reversed. The case is remanded to the bankruptcy court for the entry of an

order disallowing Erwin & Erwin's claim for attorney's fees in its entirety.

IT IS SO ORDERED.

DATED this 8 day of March, 1990.

/s/ James A. Redden
JAMES A. REDDEN
United States District Judge

Number _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

IN RE: MARQUAM INVESTMENT CORPORATION,
Debtor,

SUZAN BREWER,
Plaintiff-appellee,

vs.

ERWIN & ERWIN, Professional Corporation,
Defendant-appellant.

OPINION OF NINTH CIRCUIT

COURT OF APPEALS PANEL

August 26, 1991

Warde H. Erwin
Counsel of Record for Defendant-appellant
Address: Suite 100
2110 SW Jefferson Street
Portland, Oregon 97201

Charles C. Erwin
Additional Counsel
Address: Suite 100
2110 SW Jefferson Street
Portland, Oregon 97201

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NINTH CIRCUIT COURT

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IN RE: MARQUAM INVESTMENT CORPORATION, Debtor,	)	No. 90-35312 D.C. No. CV-88-915-RE
SUSAN BREWER, Plaintiff-appellee, vs. ERWIN & ERWIN, P.C., Defendant-appellant.	)	OPINION

Appeal from the United States District Court for the District of Oregon

James A. Redden, District Judge, Presiding

RECEIVED

August 28, 1991

Argued and Submitted

July 11, 1991 -- Portland, Oregon

Filed August 26, 1991

Before Arthur L. Alarcon,

Warren J. Ferguson and

Cynthia Holcomb Hall, Circuit Judges

Opinion by Judge Alarcon

SUMMARY

Bankruptcy/Attorney's Fees

Affirming a district court judgment reversing a decision by the Bankruptcy Court allowing a law firm's unsecured claim for attorney's fees, the court of appeals held that the bankruptcy court erred as a matter of law in not subjecting the law firm's claim to the rigorous scrutiny and burden of proof required of an insider.

Susan Brewer obtained a state court judgment on a tort claim against Marquam Investment Corporation for $97,880. Marquam was owned by Warde Erwin and his legal ecretary. Charles Erwin, Warde's

son, was vice-president and director of Marquam. Both Warde and Charles practice law as Erwin & Erwin, P.C. When the Oregon Supreme Court denied review of Brewer's tort claim judgment, Marquam filed for bankruptcy. The bankruptcy petition listed Erwin, Lamb & Erwin as creditors regarding an unsecured claim for attorneys' fees rendered for defense and services in various lawsuits entailed in representation of Marquam. The bankruptcy court concluded that the law firm did not intend to donate its legal services to the creditor and allowed the claim. The district court reversed the bankruptcy court's judgment.

[1] The court agreed with Brewer that the Bankruptcy Court erred as a matter of law in concluding that Charles Erwin had no relationship or ownership interest in Marquam. As president and vice-president of Marquam, the Erwin's

qualified as insiders of that company. The bankruptcy court's conclusion to the contrary was erroneous as a matter law. [2] An insider's dealings with a bankrupt corporation must be subjected to rigorous scrutiny. [3] When the validity of an insider's contract with a corporation is at issue, the burden is on the insider not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested in it. [4] The bankruptcy court erred in not expressly placing the burden on the Erwin law firm to prove that it entered into an agreement in good faith with Marquam for legal services. No evidence was presented that Marquam agreed to pay for any services furnished by the Erwin law firm. No entries of the debt or the rendition of serices was recorded. The Erwin law firm did not

send a bill for its legal services prior to the date Marquam filed a petition in bankrtupcy. [5] Because the bankruptcy court failed to subject the Erwin law firm's claim to the rigorous scrutiny and the burden of proof required of an insider, its judgment could not stand. [6] The court also agreed that the bankruptcy court's finding that the Erwin law firm's claim for legal services was valid was clearly erroneous. [7] After reviewing the evidence in the record before the bankruptcy court, the appeals court was left with a definite and firm conviction that the bankruptcy court was mistaken in finding that the Marquam company entered into a contract to pay the Erwin law firm for its legal services. [8] Assuming the district court erred in considering matters outside the record in reaching a correct conclusion, any error did not have any

impact on the appeals court's decision in this matter.

COUNSEL

Charles C. Erwin, Erwin & Erwin, Portland, Oregon, for the defendant-appellant.

Charles Robinowitz, Portland, Oregon, for the plaintiff-appellee.

OPINION

ALARCON, Circuit Judge:

Erwin & Erwin, P.C., a law firm, (the Erwin law firm) appeals from the reversal, by the district court, of the bankruptcy court's order allowing the Erwin law firm's unsecured claim for attorneys' fees against the debtor, Marquam Investment Corporation (Marqum). The Erwin law firm seeks reversal on the ground that the district court erred in concluding that the bankruptcy court's

finding, that the Erwin law firm did not intend to donate its legal services to the creditor, was clearly erroneous. Appellant's Brief at 2. We affirm the judgment entered by the district court because our independent review of the record before the bankruptcy court has convinced us that the bankruptcy court erred in fiding that Marquam agreed to pay the Erwin law firm for any legal services.

The Erwin law firm also contends that the district court considered matters that were outside the record of the bank-ruptcy proceedings, and, as a result, made improper findings of fact. Because our review of the bankruptcy court's decision is de novo, any error that may have occurred resulting from the district court's alleged consideration of matters not on the record would be completely harmless.

I

PERTINENT FACTS AND PROCEDURAL POSTURE

Marquam Corporation is a landholding company whose assets consist of an office building and several unimproved properties. Warde Erwin is the prsident of Marquam. He owns 60% of Marquam's shares of stock. LaVelle Mullennex owns 40% of Marquam's stock. Charles Erwin was designated as the vice-president and a director of Marquam in the petition for bankruptcy. Warde Erwin and his son, Charles, practice laws under the firm name, Erwin & Erwin, P.C. LaVelle Mullennex is Warde Erwin's legal secretary.

Suzan Brewer is a former tenant of Marquam. A dispute arose when Marquam sought to evict Brewer in order to demolish the house in which Brewer was living. Brewer sued Marquam in 1976 for intentional infliction of emotional

distress and violation of the Oregon Residential Landlord and Tenant Act, ORS 91.700-.895. On June 20, 1980, the jury returned a verdict in favor of Brewer. The jury awarded a total of $22,880 in general damages and $75,000 in punitive damages.

On June 23, 1980, three days after the jury returned its verdict, Marquam transferred its unimproved lots to Squaw Creek Construction Company. Brewer filed a fraudulent conveyance action in state court against Marquam. On April 21, 1982, the state court set aside the transfer to the Squaw Creek Construction Company.

Marquam filed an appeal from the judgment in favor of Brewer in the tort action. On April 26, 1983, the Oregon Supreme Court denied final review of the 1980 judgment. Eight days later, on May 4, 1983, Marquam filed for bankruptcy.

It listed assets totaling $107,152.

The bankruptcy petition prepared by Warde H. Erwin as President of Marquam, the debtor corprotion, listed Erwin, Lamb & Erwin as creditors regarding an unsecured claim "[f]or attorneys' fees rendered starting (sic) in April of 1976 to date for defense and services in various lawsuits entailed in representation of Marquam."

No billing or any corporate documents evidencing that a debt for attorneys' fees was incurred by Marquam was attached to the petition in bankruptcy. Furthermore, no time slips were submitted with the petition. Time slips were attached to the Erwin law firm's amended claim filed in 1986.

At the hearing before the bankruptcy court, the Erwin law firm did not produce an account receivable or any billing to Marquam for legal services. No corporate

records, such as the minutes of a board of director's meeting or an account payable, were offered to show that Marquam had agreed to pay the Erwin law firm for legal services.

The bankruptcy court recognized that there was no documentary evidence to support the Erwin law firm's claim that Marquam intended to enter into a contract to pay for legal services. The bankruptcy court stated: "All we have is the testimony of Charles Erwin that such was the intent." Nevertheless, the bankruptcy court found that "the evidence shows that the services performed by the professional corporation were not intended to be donated to Marquam but were intended that they would be paid by Marquam when funds were available by Marquam to make payment of those fees...."

On March 24, 1988, the bankruptcy court approved Marquam's chapter 11 plan

and allowed the Erwin law firm's claim for $120,000 in attorney fees. Brewer's $75,000 punitive damages claim was discharged pursuant to 11 U.S.C. Sec. Sec. 726(a)(4) because there were insufficient funds in the bankrupt's estate to reach it.

II

DISCUSSION

A. Function of Court of Appeals in Reviewing A Bankruptcy Court's Findings and Conclusions

This matter is before this court following reversal by the district court of the bankruptcy court's findings and conclusions of law concerning a law firm's claim for attorney's fees against the debtor. Our review of the bankruptcy court's order is de novo.

Because we are in as good a position as the district court to review

> the findings for the bankruptcy court's decision. See, e.g., In re Mellor, 734 F.2d 1396, 1299 (9th Cir. 1984); In re Comer, 723 F.2d 737, 739 (9th Cir. 1984); In re Bialac, 712 F.2d 426, 429 (9th Cir. 1983). We review the bankruptcy court's findings of fact under the clearly erroneous standard and its conclusion of law de novo. In re American Mariner Industries, Inc., 734 F.2d 426, 429 (9th Cir. 1984). (Footnote omitted).

Pizza of Hawaii, Inc., 761 F.2d 1374, 1377 (9th Cir. 1985). Thus, we are in realty reviewing the claims of error presented by the party that did not prevail before the bankruptcy court. While Brewer is nominally the appellee before this court, it is her challenge to

the Bankruptcy court's findings and conclusions of law that we must review. By the same token, although designated as the appellant, the Erwin law firm's mission before this court is to defend the victory it achieved in the bankruptcy court.

B. Impact of Insider Status on Proof of Attorney Fee Claim

[1] Brewer argues that the bankruptcy court erred as a matter of law in concluding that Charles Erwin "has no relationship or no ownership interest in Marquam." We review de novo a bankruptcy court's conclusion of law. Ragsdale v. Haller, 780 F.2d 794. 795 (9th Cir. 1986). The term "insider" includes a director, officer, or person in control of a debtor corporation. 11 U.S.C. Sec. 101(30)(B)(i)(ii)(iii). A relative of a director, officer, or person in control

of the corporation was the president of Marquam. His son, Charles Erwin was listed as Marquam's director and vice-president in Marquam's 1983 bankruptcy petition. Thus, Warde Erwin and Charles Erwin were insiders of Marquam. The bankruptcy court's conclusion that Charles Erwin was not an insider was erroneous as a matter of law.

[2] The bankruptcy court's failure to recognize that Charles Erwin was an insider may explain its finding that the Erwin law firm's claim for legal services was a valid debt of the corporation. The Supreme Court has instructed that an insider's dealings with a bankrupt corporation must be "subjected to rigorous scrutiny." Pepper v. Litton, 308 U.S. 295, 306 (1939).

[3] When the validity of an insider's contract with a corporation is at issue, the burden is on the insider

"not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interest therein." Id.

The court also explained in Pepper v. Litton, the test that must be applied to an insider's transaction with a corporation:

> The essence of the test is whether or not under all the circumstances the transaction carries the earmarks of an arm's length bargain. If it does not, equity will set it aside.

Id. at 306-307.

[4] The bankruptcy court did not expressly place the burden on the Erwin law firm to prove that it entered into an agreement in good faith with Marquam for legal services. No evidence was offered

that Marquam agreed to pay for any services furnished by the Erwin law firm. The Erwin law firm did not record its alleged services to Marquam in an account receivable. The corporation did not enter legal expenses owed the law firm as an account pawyable. No evidence was presented of any corporate minutes reflecting a decision to enter into an agreement with the Erwin law firm for legal services.

The bankruptcy court based its finding that Marquam owed the law firm $120,000 for legal services primarily on Charles Erwin's testimony that he did not intend to donate his legal services. The bankruptcy court's reasoning can be summarized as follows:

A lawyer is entitled to payment for legal services performed pursuant to an agreement with a bankrupt corporation.

Charles Erwin did not intend to

donate his legal services to the Marquam Investment Corporation.

Therefore, the Marquam Investment Corporation promised to pay Charles Erwin for his legal services.

This flawed syllogism not only defies elementary precepts of logic, it violates fundamental principles of contract law that require mutuality of assent, and ignores the burden placed upon an insider to prove that the debt resulted from an arm's length transaction that can withstand rigorous scrutiny.

[5] Because the bankruptcy court failed to subject the Erwin law firm's claim to the rigorous scrutiny and the burden of proof required of an insider, its judgment cannot stand.

C. Application of the Clearly Erroneous Standard

[6] Brewer also asserts that the

bankruptcy court's finding that the Erwin law firm's claim for legal services was valid is clearly erroneous. We agree.

A trial court's finding of fact is clearly erroneous if "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364. 395 (1948). Upon a review of the record before the court, we have a definite and firm conviction that a mistake has been made in this matter.

The facts before the bankruptcy court demonstrate that a corporation controlled by members of the Erwin law firm has successfully avoided payment of a state court judgment entered more than 11 years ago in favor of Brrewer and against Marquam.

Eight days after the Oregon Supreme

Court denied final review of the 1980 judgment, Marquam filed a petition in bankruptcy listing its assets at $107,152, and the claim of the Erwin law firm for $120,000 in unbilled legal services. As set forth above, this claim is not supported by corporate minutes, an account payable, or any record of any billing for legal services. Under all the circumstances presented in the record before the bankruptcy court, we have concluded the testimony of the corporate insiders in support of the Erwin law firm's claim for legal services is so "implausible on its fact that a reasonable fact finder would not credit it." Anderson v. City of Bessemer City, North Carolina, 470 U.S,. 564, 575 (1985).

[7] After reviewing the evidence in the record before the bankruptcy court, we are left with a definite and firm conviction that the bankruptcy court was

mistaken in finding that the Marquam Investment Corporation entered into a contract to pay the Erwin law firm for its legal services. Accordingly, we hold that Charles Erwin did not intend to donate his legal services is clearly erroneous.

D. Consideration by the District Court of Matters Outside the Record.

[8] The Erwin law firm contends that the district court erred in considering matters outside the record and made impermissible findings in reversing the bankruptcy court. As set forth above, we have reviewed the findings of fact and conclusions of law of the bankrtupcy court without deference to the district court's decision on these matters, as required by the law of this circuit. Our de novo or independent review has convinced us that the

bankruptcy court's decision must be reversed. That is the ultimate conclusion reached by the district court. "[W]e may affirm the district court based on any reasosn finding support in the record." Welch v. Fritz, 909 F.2d 1330, 1331, (9th Cir. 1990). Thus, assuming arguendo that the district court erred in reaching a correct conclusion, any error by the district court has had no impact on our decision in this matter.

E. Failure of the District Court to Hold a Hearing

The Erwin law firm asserts that the district court by ruling without a hearing or an opportunity for oral argument did not comply with Fed. R. Bankr. 8012. The Erwin law firm, however, failed to provide "[a] statement of the issue[s] presented, and the reasons

therefor, with citations to the authorities, statutes and parts of the record relied on." Fed. R. Bankr. 8010(E) Erwin's failure to comply with Rule 8010(C) waives this issue on appeal. See Northwest Acceptance Corp. v. Lynnwood Equip., Inc., 841 F.2d 918, 912 (9th Cir. 1988). (Failure to comply with the parallel rule, Fed. R. App. P.28(a)(4), waives the issue on appeal.)

F. Request for Judicial Notice

Brewer asks this court to take judicial notice of facts which are not readily determinable by resort to unquestionable sources. We may not take judicial notice of facts which are not "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonable be questioned." Fed R. Evid. 201(b)(2). Brewer's request for judicial notice is denied.

AFFIRMED.

Number _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

IN RE: MARQUAM INVESTMENT CORPORATION,
Debtor,

SUZAN BREWER,
Plaintiff-appellee,
vs.
ERWIN & ERWIN, Professional Corporation,
Defendant-appellant.

ORDER OF MARCH 24, 1992

NINTH CIRCUIT COURT OF APPEALS

PANEL

LEVYING SANCTIONS OF $5058.75

Warde H. Erwin
Counsel of Record for Defendant-appellant
Address: 2110 SW Jefferson Street
Suite 100
Portland, Oregon 97201
(503) 226 4525
Charles C. Erwin
Additional Counsel
Address: 2110 SW Jefferson Street
Suite 100
Portland, Oregon 97201
(503) 226 4525

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ORDER OF MARCH 24, 1992

NINTH CIRCUIT PANEL

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FOR PUBLICATION

THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: MARQUAM INVESTMENT CORPORATION, Debtor.	)	No. 90-35312 D.C. No. CV-88-915-RE
SUZAN BREWER, Plaintiff/Appellee, -vs- ERWIN & ERWIN, P.C., Defendant-Appellant.	)	ORDER AND DISSENT

Filed March 24, 1992

Before: Arthur L. Alarcon, Warren J. Ferguson and Cynthia Holcomb Hall, Circuit Judges

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ORDER

After receiving a favorable decision in chief (In re Marquam Inv. Corp., 942 F.2d 1462 [9th Cir. 1991]), the plaintiff-appellee seeks attorney fees against the appellant pursuant to Rule 38 of the Federal Rules of Appellate

Procedure, which provides that "[i]f a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs of the appellee." Fed. R. App. P. 38 advisory committee note states that damages may be awarded in frivolous appeals as a matter of justice to the appellee and as a penalty against the appellant.

In our reported opinion on the case in chief, we affirmed the district court's ruling and declared that the bankruptcy court clearly erred in finding that Marquam agreed to pay the Erwin law firm for any legal services. In re Marquam, 941 F.2d at 1466. First, we agreed with the district court that it was clear beyond dispute that the Erwins were insiders in the Marquam corporation as a matter of law. The Supreme Court in Pepper v. Litton, 308 U.S. 295 (1939) declared that an insider must prove the

good faith of the transaction and its inherent fairness. There were no billings or corporate documents evidencing a debt for attorney fees, nor were there any accounts receivable or billings for legal services. In Re Marquam, 942 F.2d at 1466. The bankruptcy court acknowledged that "all we have is the testimony of Charles Erwin that such (legal services for pay) was the intent." Id. at 1464. Nevertheless, despite the lack of documentary evidence in a situation where the burden was on appellant to show the good faith of the transaction, the bankruptcy court allowed the claim for attorney fees. The district court overturned this ruling, and we easily affirmed. We also pointed out that the reasoning of the bankruptcy court was a flawed syllogism that not only defied elementary precepts of logic but also fundamental purposes of contract law.

Id. at 1466. With this factual and legal background, any appeal from the district court's reversal of the bankruptcy court was beyond doubt frivolous to the extreme. See McConnell v. Critchlow, 661 F.2d 116, 118 (9th Cir. 1981) (appeal is frivolous when result is obvious or appellant's arguments of error are wholly without merit).

The appeal of the appellant to this court is frivolous within Fed. R. App. P. 38, and the request for attorney fees of $5,058.75 is reasonable and just.

It is therefore ordered that the amount of $5,058.75 is awarded to the appellees against the appellant Erwin & Erwin, P.C. as damages pursuant to Rule 38 of the Federal Rules of Appellate Procedure.

ALARCON, Circuit Judge, Dissenting

I would deny Susan Brewer's request for attorney's fees in this matter.

Brewer seeks attorney's fees pursuant to Rule 38 of the Federal Rules of Appellate Procedure. Rule 38 provides that attorney's fees may be awarded if an appeal is frivolous. I respectfully disagree with my colleagues' conclusion that the appeal from the district court's reversal of the bankruptcy court's judgment, filed by Erwin & Erwin, P.C. (the Erwin law firm) was frivolous.

In this matter, the bankruptcy judge ruled in favor of the Erwin law firm. The appeal from the bankruptcy court's ruling was taken by Brewer, not the Erwin law firm. In our independent review of the bankruptcy court's judgment in favor of the Erwin law firm, we held that the bankruptcy court erred as a matter of law in concluding that Charles Erwin was not an insider. In re Marquam Inv. Corp., 942 F.2d 1462, 1465-66 (9th Cir. 1991).

Punishment of the party that prevailed in the trial court under Rule 38 for seeking to uphold a favorable judgment appears to be a bizarre application of a rule designed to discourage frivolous appeals by the party that lost in the trial court. The majority has not cited any case that lost in the trial court. In McConnell v. Critchlow, 661 F.2d 116 (9th Cir. 1981), the only authority cited by the majority, we imposed sanctions against a party that filed an appeal from the dismissal by the district court of a civil rights action based on arrests that took place 4 to 15 years before the filing of his complaint. We concluded that the appeal was frivolous because "McConnell made no argument on appeal as to why the limitations period had not run." Id. at 117. In this matter, the Erwin law firm vigorously, albeit erroneously, contested the

district court's reversal of the judgment court.

The reversal of the bankruptcy court's judgment by the district court's judgment simply demonstrated that two judges disagreed in their interpretation of the law regarding an insider's duties, not that either party's legal arguments were frivolous. The Erwin law firm had the right to seek review of the district court's reversal of the bankruptcy judge's judgment upholding the claim for legal fees. Failure to do so in light of the bankruptcy judge's favorable decision may have bordered on malpractice. I cannot concur in the majority's conclusion that the Erwin law firm's decision to have this court resolve this conflict between the two courts was frivolous.

This court has the duty to review a bankrtupcy court's decision de novo without deference to the district court's

legal conclusions. In re Marquam Inv. Corp., 941 F.2d at 1465. In the Marquam decision, we described our role in reviewing a bankruptcy court's decision as follows:

> [W]e are in reality reviewing the claims of error presented by the party that did not prevail before the bankruptcy court. While Brewer is nominally the appellee before this court, it is her challenge to the bankruptcy court's findings and conclusions of law that we must review. By the same token, although designated as the appellant, the Erwin law firm's mission before this court is to defend the victory it achieved in the bankruptcy court.

Id.

The effect of the majority's

conclusion to award attorney's fees in favor of the party that lost before the bankruptcy court is that a party that seeks to sustain a bankruptcy judge's judgment risks incurring sanctions if this court disagrees with the bankruptcy court's interpretation of the law. I seriously doubt that the drafters of Rule 38 intended to sanction a party that prevailed in the bankruptcy court whenever we conclude that the bankruptcy court erred.

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
July 22, 1992
CATHY A. CATTERSON
Clerk
U.S. COURT OF APPEALS

In re: MARQUAM INVESTMENT CORPORATION, Debtor.	
SUZAN BREWER, Plaintiff/Appellee, -vs- ERWIN & ERWIN, P.C., Defendant-Appellant.	No. 90-35312 D.C. No. CV-88-915-RE O R D E R

ALARCON, Circuit Judge

Appellant's petition for relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure, for arrest of judgment, and for reconsideration of the opinion of this court is denied.

Appellant, Erwin & Erwin, P.C., is directed to pay a sanction of $2,500 plus-

interest until paid to the Clerk of this Court pursuant to Rule 38 of the Federal Appellate Procedure.

Judge Alarcon votes against the imposition of a further sanction.

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
July 28, 1992
CATHY A. CATTERSON
Clerk
U.S. COURT OF
APPEALS

In re: MARQUAM INVESTMENT CORPORATION, Debtor.	
SUZAN BREWER, Plaintiff/Appellee, -vs- ERWIN & ERWIN, P.C., Defendant-Appellant.	No. 90-35312 D.C. No. CV-88-915-RE O R D E R

ALARCON, Circuit Judge

The order filed July 22, 1992 directing appellant, Erwin & Erwin, P.C. to pay a sanction of $2,500 plus interest is hereby ordered vacated.

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
July 22, 1992
CATHY A. CATTERSON
Clerk
U.S. COURT OF
APPEALS

In re: MARQUAM INVESTMENT CORPORATION, Debtor.	
SUZAN BREWER, Plaintiff/Appellee, -vs- ERWIN & ERWIN, P.C., Defendant-Appellant.	No. 90-35312 D.C. No. CV-88-915-RE O R D E R

ALARCON, Circuit Judge

Appellant's motion for an order permitting the filing of an excerpt is granted.

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
August 10, 1992
CATHY A. CATTERSON
Clerk
U.S. COURT OF
APPEALS

In re: MARQUAM INVESTMENT CORPORATION, Debtor.	
SUZAN BREWER, Plaintiff/Appellee, -vs- ERWIN & ERWIN, P.C., Defendant-Appellant.	No. 90-35312 D.C. No. CV-88-915-RE O R D E R

Before: ALARCON, Ferguson and Hall,

Circuit Judges

Appellant's petition for relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure for arrest of judgment and for reconsideration of the opinion of this court is denied.

Appellant, Erwin & Erwin, P.C. is directed to pay a sanction of $2,500 pursuant to Rule 38 of the Federal Appellate Procedure.

Judge Alarcon votes against the imposition of a further sanction.

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
August 13, 1992
CATHY A. CATTERSON
Clerk
U.S. COURT OF
APPEALS

In re: MARQUAM INVESTMENT CORPORATION, Debtor.	
SUZAN BREWER, Plaintiff/Appellee, -vs- ERWIN & ERWIN, P.C., Defendant-Appellant.	No. 90-35312 D.C. No. CV-88-915-RE O R D E R

Before: ALARCON, Ferguson and Hall, Circuit Judges

The panel as constituted in the above case has voted unanimously to deny the petition for rehearing. Judges Alarcon and Hall have voted to reject the suggestion for a rehearing en banc. Judge Ferguson so recommends.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

Number _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

IN RE: MARQUAM INVESTMENT CORPORATION,)
)
Debtor.)
)
)
SUZAN BREWER,)
)
Plaintiff-appellee,)
)
vs.)
)
ERWIN & ERWIN, P.C.,)
)
Defendant-appellant.)
)

RE: DOCKET ENTRIES - UNITED STATES BANKRUPTCY COURT CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT COURT

Warde H. Erwin
Counsel of Record for Defendant-appellant
Address: Suite 100
2110 SW Jefferson Street
Portland, Oregon 97201-7702

Charles C. Erwin
Additional Counsel
Address: Suite 100
2110 SW Jefferson Street
Portland, Oregon 97201-7702

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6/21/83	Inventory and Report of Assets
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8-3-83 Monthly Financial Report - as of August 1, 1983

8-3-83 Preliminary Order Appointing Creditors Committee

" Order of Designation

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8-11-83 ORDER - - debtor ordered not to expend any assets prior to hearing on Aug. 24, 1983

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2/23/84 Transcript of Hearing on Dec. 1, 1984 (See separate transcript file)

2/24/84 Transcript of Hearing on Dec. 1, 1984 (See separate transcript file) (Vol. 1)

3/2/84 Transcript of Hearing on Nov. 28, 1984 (see separate transcript file)

3/14/84 Rule 2015 Report of Debtor-in-Possession for the Month of Feb. 1984

3/6/84 Correspondence re: cont. hrg set for 3/6/84 to be continued to 5/1/84 1:30

3/30/84 ORDER Re: Objections to Claim of Lawrence W. Erwin (Claim is allowed as valid; any objections as to amount shall be heard upon request of Object Parties (cc C.

Erwin, L. Erwin, C. Robinowitz, J. Durkheimer (eod 4/3/84

3/30/84 ORDER (re Suzan Brewer' Motion to lift Automatic stay) See file for particulars cc C. Erwin, L. Erwin, C. Robinowitz, J. Durkheimer (eod 4/3/84 r

3/30/84 ORDER (Susan Brewer shall disclose the identity of CPA or Attorney Witness yet to be called in her obj to claim of Erwin & Erwin and a summary of those witnesses' testimony on or before April 6, 1984 (eod 4/3/84 rb)

4/7/84 HEARING on objection to claim of Erwin rescheduled to May 2, 1984 9:30 am, #2

4/12/84 OBJECTION to Order of 3/30/84 Re: Lifting of Stay by Brewer by Atty for Debtor

4/16/84 Transcript of Proceedings - March 15, 1984 (see separate

transcript file) Vol. 1

Apr 19 1984 Rule 2015 Report of Debtor-in posession for the Month of March, 1984

4/25/84 MOTION to set Aside Order

4/25/84 Affidavit of Charles Robinowitz

4/26/84 Rule 41 Motion to Dismiss of Erwin & Erwin

4/27/84 Trustee's Motion to Convert case from Chapter 11 to Chapter 7 (docketed 4/30/84)

4/26/84 Memorandum of Charles Robinowitz, attorney for Susan Brewer (docketed 5/1/84)

5/1/84 Debtor's Opposition to Motion (of Suzan Brewwer) to Set Aside the Order of March 30, 1984 of Judge Johnson

5/7/84 ORDER DISBURSING FUNDS

5/14/84 MONTHLY REPORT for April

May 15, 1984 Addition to Monthly Report for April, 1984 (??5-19-84)

JUNE 13 1984 Rule 2015 Report of Debtor-in-Possession for the Month of May 1984 (eod 6/18/84)

6/27/84 Applic. of Marquam Investment Corp. for Authority to Pay for Immediate Repairs

7/2/84 Transcript of Proceedings - May 2, 1984 (eod 7/5/84) See separate transcript file Vol 1

7/18/84 Trustee's Atty Objection to Proposed Expenditure (payment of electrical and plumbing repairs)

JUL 16 1984 Rule 2015 Report of Debtor-In-Possession for the Month of June 1984

7/26/84 Affidavit of Charles C. Erwin re: Applic. of Marquam Investment Corp. for Authority to Pay for Immediate Repairs

VOL. 4

AUG 15 1984 Rule 2015 Report of Debtor-in-Possession for the month of

June 1984

9/11/84 Memorandum Opinion

* ORDER Denying Applic. for Authority to Pay for Immediate Repairs

SEP 18 1984 Rule 2015 Report of Debtor-in-Possession for the aMonth of Aug 1984 (eod 9-18-84)

OCT 17 Rule 2015 Report of Debtor-in-Possession for the Month of Sept 1 through Oct 5 (eod 10-19-84)

NOV 14 1984 Rule 2015 Report of Debtor-in-Possession for the Month of Nov 1 through Dec 15, 1984 (eod 12/27/84

DEC 19 1984 Rule 2015 Report of Debtor-in-Possession for the Month of Nov 1 through Dec 15, 1984 (eod 12-27-84)

12-20-84 MOTION to Compel Compliance with Orders of the Court eod 12/27/84 Correspondence re:

Status hearing on objections to claims and motion to compel compliance with orders of the court scheduled - Mon, Jan 21, 1985 at 1-:00 CTRM 2 eod 12/27/84

JAN 16 1985 Rule 2015 Report of Debtor in-possession for period of 12/15 84 thru 1/10/85

1/21/85 ORDER Requiring Discovery Be Made

1/28/85 Continued Hearing on Ms. Brewer's objections to claim of Erwin & Erwin, P.C.-Tues. Apr. 2, 1985 at 9:30 a.m. Ctrm #2

1/31/85 Objections of Suzan Brewer to Proposed Distribution of Settlement Funds

2/4/85 Summary of Proposed Testimony of Richard B. Solomon (fld by Suzan Brewer)

2/14/85 Rule 2015 Report of Debtor-In-Possession for Period of 12/15/84 thru 1-10-85

2/25/85 Hrg on Suzan Brewer's Objections

to proposed distribution of settlement funds - Tue. Apr. 2, 1985 at 9:30 a.m. (the same time set for the conued hrg on Ms. Brewer's objections to claims)

" Applic. of debtor for Disbursement of Funds and ORDER THEREON

" ORDER RE: disbursements of settlement funds

3/1/85 Final Applic. of debtor's attorney for Compensation for Professional Services by Attorney

3-6-85 Hrg on final applic. for compensation (Lawrence Erwin) - Tue. Apr. 2, 1985 at 9:30 a.m. Ctrm #2

MAR 13 1985 Rule 2015 Report of Debtor-In-Possession for the Period of 2/10/85 thru 3/10/85

3/21/85 NOTICE of Depo: Dehbtor Trustee, Attys: 3/25/85 9 am Irwin office

3/27/85 SUMMARY OF TESTIMONY OF ROY L. GRIFFIN CPA

4/1/85 Certificate of Service-Subpoena

to Witness (Erwin)

4/2/85 Certificate of Service - Subpoena (Mullennex)

4/3/85 COMPLAINT 437/497 85-0131 (Franzwa v. Erwin et al)

4/5/85 Continued Hrg (corres. did not state what kind of hearing) - Mon. May 6, 1985 at 9:30 a.m. and Tue. May 7, 1985 at 9:30 a.m. Ctrm #2

4/12/85 Notice of Hearing - on debtor's amended motion for classification of claims - Mon. May 6, 1985 at 9:30 a.m. Ctrm #2 and Tue. May 7, 1985 at 9:30 a.m. Ctrm #2

4/12/85 Certificate of Service of Subpoena to Witness-Lavelle Mullenex

4/12/85 Certificate of Service of Subpoena to Witness-Custodian of Records, Benj. Franklin Savings, Angel Nielson

4/12/85 Certificate of Service of Subpoena to Witness- Hon. Philip

T. Abraham, Laury Swan

4/15/85 Certificate of Service of Subpoena to Witness-James T. Marquoit, Linda Walls

APR 16 1985 Rule 2015 Report of Debtor-in-Possession for the Month of March 1985

4/26/85 Corres from the court to parties: (1) hrg on Suzan Brewer's Objection to claim of Erwin, Lamb etc. set for Mon. May 6, 1985, at 1:30 p.m. Ctrm #2-if necessary, this one matter can be concluded on Tue. May 7, 1985 at 9:30 a.m. (2) court does not wish to considerr objections to disl. state, or motion for classification of claims at this time (3) pretrial conference in Franzwa, Inc. v. Erwin et al, Adv. Pro. #

85-0131 H remains unchanged

4/29/85 Corres. re: Claim of Brewer

5/2/85 Brewer's Seconded Amended Objection to Proof of Claim of Erwin &Erwin

5/6/85 Rule 41 Motion to Dismiss (Rule 7041 Bankruptcy Rules) - fld by Creditor, Erwin & Erwin

5/6/85 Rule 41 Supplemental Motion to Dismiss (Rule 7041 Bankruptcy Rules) fld by Erwin & Erwin

5/9/85 JUDGMENT Re: Claim of Erwin & Erwin, creditor

MAY 15 1985 Rule 2015 Report of Debtor-In-Possession for the period of 3/10/85 thru 4/10/85

5/16/85 ORDER TO SHOW CAUSE RE:) Mon. Jun. 3, 1985 aat 9:15 a.m. Ctrm #2

DISMISSAL, CONVERSION)

(Failure to file adequate monthly report)

OR OTHER RELIEF

5/17/85 Transcript of Proceedings - Apr 2, 1985 at 9:30 a.m. See separate transcript file Vol.2

5/21/85 Corres. - Hrg scheduled (show cause) 7/3/85 at 9:15 a.m. Ctrm #2 cancelled

5/22/85 Profit and Loss and Balance Sheet for March (end April 10, 1985) that was missing from the Rule 2015 Report for the period of 3/10/85 thr 4/10/85

5/22/85 Precautionary Motion for Leave to Appeal pursuant to 28 USC # 1334 (b)

ORAL ARGUMENT ON MOTION REQUESTED

5/22/85 NOTICE OF APPEAL (7/L6/85 (? DENIED)

5/22/85 Notification of Motion for Leave to Appeal & Notice of Appeal to all parties & staying proceedings until DC

	decides Motion cc:
VOL.6	copies to Erwin, Erwin, Durkheimer, Robinowitz
5/29/85	MOTION to Dismiss Appeal
5/31/85	Motion to (1) Allow Resignation of Trustee, (2) Substitute Party-Plaintiff, and (3) Appoint a Custodian -
5/31/85	MEMORANDUM in Support of Motion to Dismiss Appeal not Timely Filed (?)
5/31/85	ANSWER in Opposition to Precautionary Motion for Leave to Appeal Interlocutory Order
6/3/85	STATEMENT of Present Appellant Issues by Appellee (Appeal)
6/4/85	Corresp re: Hearing on Trustee's motion to (1) Allow Resignation of Trustee (2) Substitute party-plaintiff, and (3) Appoint a Custodian- Thurs, June 13, 1985 at 10:30

CTM 2

6/5/85 Nonopposition to Motion to Allow Resignation of Trustee; Opposition to Motion to Substitute Party Plaintiff; and Opposition to Motion to Appoint Custodian

6/7/85 Response to Trustee's Motion to Withdraw by Erwin & Erwin a Professional Corporation

6/4/85 REQUEST for Oral Ar gument (APPEAL)

6/4/85 AFFIDAVIT of Charles Robinowitz (APPEAL)

6/4/85 AFFIDAVIT of Beverly A.Camp (APPEAL)

6/4/85 AFFIDAVIT of Yvonne Walden (APPEAL)

6/4/85 AFFIDAVIT of Dolores Woodward (APPEAL)

6/4/85 AFFIDAVIT of Mary Seabeck (APPEAL)

6/11/85 Opposition to Resignation of Trustee or in the Alternative for Conditional Resignation (pro pria persona and atty for Mullennex)

6/13/85 ORDER deeming appeal timely filed as of May 20, 1985
cc: Erwin, Erwin, Durkheimer, card to Robinowitz

6/13/85 RESPONSE to Motion for Extension of Time Within Which to File Notice of Appeal by Erwin & Erwin,a Professional corporation (APPEAL)

6/13/85 Memorandum (Atty for Trustee)

6/13/85 RESPONSE to Motion for Extension of Time Within Which to File Notice of Appeal by Erwin & Erwin, a Professional corporation (APPEAL)

6/13/85 Excerpt of Proceedings of May 6, 1985 - see separate transcript

file

6/13/85 Applic. of trustee for Appointment of Special Attorney - Charles Robinowitz Atty.

6/13/85 Affidavit of Charles Robinowitz in support of applic. of trustee for appt. of attorney

6/13/85 ORDER Authorizing Employment of Attorney by trustee-Charles Robinowitz, Atty.

VOL. 7 JUN 14 1985 Rule 2015 Report of Debtor-in-Possession for the period of 4/10/85 thru 5/10/85

6/17/85 Partial Transcript of Proceedings -=Apr. 2, 1985 at 9:30 a. m. See separate transcript file

6/25/85 Response to Amended Objection to Claim of Erwin and Mullennex

6/24/85 Supplemental Memorandum re appeal to District Court

7/3/85 Susan Brewer's Memorandum on Issue of Standing re appeal to

7/16/85 DC ORDER that creditor Suzan Brewer's motion for leave to appeal an order of the bankruptcy court allowing creditor Erwin & Erwin claim for legal fees against debtor Margquam Investment Corp. is DENIED (James A. Redden)
cc: Robinowitz, Erwin

JUL 18 1985 Rule 2015 Report of Debtor-In-Possession for the period of 5/10/85 thru 6/10/85

8/1/85 Preliminary hrg to deterine amount of claim of Lawrence Erwin - Tue. Aug. 22, 1985 at 10:30 a.m.

8/1/85 Preliminary hrg to determine amount of claim of Erwin & Erwin-Mon. Aug. 26, 1985 at 10:30 a.m.

8/1/85 Preliminary hrg on loan claims and indemnification of claims of Lavelle Mullennex and Warde Erwin

- Thurs. Aug. 29, 1985 at 10:30 a.m.

8/1/85 Preliinary hrg on wage claim of Lavelle Mullennex - Tue. Sept. 3, 1985 at 1:30 p.m.

8/13/85 Hrg to determine claim of Erwin & Erwin - Mon. Aug. 26, 1985 at 10:30 a.m. via tele. conf. is CANCELLED

Hrg to determine claim of L. Erwin set for Thurs. Aug. 22, 1985, at 10:30 a.m. via tele. conf. is CANCELLED

VOL. 8

AUG 14 1985 Rule 2015 Report of Debtor-In Possession for the period Ending 8/10/85

8/16/85 Hrg set Thurs. Sept. 19, 1985 at 1:30 p.m. on the following motions: (1) motion disqualify Erwin & Erwin (2) det. claim of L. Erwin (3) det. claim of Erwin &

Erwin

AUG 19 1985 ???? Re Addition to Matrix

8/19/85 Hrg set for Thurs. Sept. 1985 at 10:30 a.m. Ctrm #2: (1) determination of amount of claim of Erwin & Erwin (2) determination of account of claim of Lawrence Erwin (3) motion to disqualify Erwin & Erwin

9/5/85 Applic.of debtor to Make Disbursement from Rental Incomes and Order THEREON

9/5/85 AMENDED DISCLOSURE STATEMENT fld by debtor

9//5/85 NOTICE OF HEARING ON) Mon. Sept. 30, 1985 at 9:00 a.m. Ctrm #1 PROPOSED CHAPTER 11) Objections by 9/23/85 DISCLOSURE STATEMENT) (certificate of mailing)

9/16/85 NOTICE RE; CHANGE OF DATE) Disclosure statement hearing changed FOR HEARING ON PROPOSED

CHAPTER 11 DISCLOSURE STATEMENT
from 9/30/85 to Mon. Oct. 7, 1985
at 1:30 p.m. Ctrm #2

SEP 17 1985 Rule 2015 Report of Debtor-In -Possession for the period of 8-10 to 9/10/85

9/23/85 Suzan Brewer's Objections to Amended Disclsoure Statement

OCT -2 1985 Rule 2015 Report of Debtor-In -Possession for the month of 9-10 to 10-1-85

10/7/85 PLAN OF REORGANIZATION fld by Suzan Brewer

10/8/85 Motion of Suzan Brewer to Require Trustee to Sell Real Properrty

10/17/85 OPPOSITION TO MOTION TO REQUIRE TRUSTEE TO SELL REAL PROPERTY (Debtor)

10/7/85 MOTION FOR ORDER TO ALLOW PAYMENT OFADMINISTRATIVE EXPENSE AND ORDER THEREON (228.40 to Yamhill Tree Farms) (eod 10/18/85 rb)

10/10/85 ORDER RE: BREWER'S OBJECTIONS TO AMOUNT OF CLAIM OF ERWIN & ERWIN P.C. (eod 10/18/85 rb) to NUNC PRO TUNC: September 18, 1985 (eod 10/18/85

11/18/85 Motion of Suzan Brewer to Extend Discovery Deadline re: objection to claim of Erwin & Erwin

11/26/85 Argument of Erwin & Erwin, A Professional Corporation

11/26/85 Affidavit of Charles C. Erwin in support of Argument of Erwin & Erwin

12/9/85 Correspondence Re: Change of Address for Creditor

12/6/85 Hrg on (1) Motion to sell real property; and (2) motion to extend discovery deadline- Thurs. Dec. 12, 1985 at 1:30 p.m. (no location shown)

12/6/85 Trial on amount of claim of Lawrence Erwin, P.C. set Mon. Feb.

3, 1986 at 9:00 a.m. Ctm #2; Trial on claim of Erwin & Erwin, P.C. set Mon. Feb. 3, 1986 at 10:30 a.m. and Teu, Feb.4, 1986 at 9:00 a.m.Both scheduled in Ctm #2

VOL. 9

12/10/85 Second Amended Objections of Suzan Brewer to Claim of Law office of Lawrence W. Erwin, P.C.

12/13/85 EXCERPT of Proceeding (Partial trans of testimony of Michael Marcus) of April 2, 1985 (H) See separate transcript file- Vol 2

12/17/85 ORDER Denying Motion to Require Trustee to Sell Real Property

12/17/85 ORDER Denying Motion to Extend Discovery Deadline

12/19/85 Motion of Lawrence W. Erwin, P.C. to Strike Second Amended

	Objections to Claim of Law Office of Lawrence W. Erwin, P.C.
1/9/86	Answer to Law Office of Lawrence W. Erwin, P.C.'s Motion to Strike fld by Suzan Brewer
1/15/86	Certificate of Service - Subpoena to Witness - Records Custodian, Multnomah City Assessors's Office
1/14/86	Correspondence Re: Change of Address for Creditor
1/29/86	ORDER (re 2nd Amended OBJ. to claim filed by Suzan Brewer - Motion to strike) (Motion to Strike "B","C" "D," "E" and "FP allowed; and "A" amd"G" in Brewers Second Amend Obj. will be heard Feb. 3, 1986)
1/30/86	ORDER -The Proof of Claim of Mullennex for wages is disallowed as a claim E

2/5/86 CERTIFICATION of Service (Subpoena to Witness) (Martin)

2/13/86 Memorandum Re: Indemnity of Warde H. Erwin and Lavelle Mullennex

2/25/86 ORDER Re Objection to Claims of Warde H. Erwin and Lavelle Mullennex Allowed as follows: Mullennex Indemnity $4,711.00; Erwin Indemnity 24,724.00

2/25/86 ORDER Re Objection to Claim of Law Office of Lawrence W. Erwin, P.C. by Suzan Brewer (Allowed in amount of $9,269.18)

3/3/86 NOTICE OF APPEAL an order of 2/25/86 re Claims of Erwin & Mullennex

3/4/86 NOTICE OF REFERRAL TO BAP #1 OR 861185,D.C.Fee Paid 861523

3/4/86 E TRANSMISSAL FORM Judg DC

Affirmed 6/23/8 9th Cir

3/3/86 NOTICE OF APPEAL on order of 2/25/86 Re Claim of Law office Lawrence W. Erwin

3/4/86 E NOTICE OF REFERRAL TO BAP #2 Gr 86-1185 D.C.5 Fee Paid 86-1523

TRANSMITTAL FORM Judg DC Affirmed 6/23/?8 9th Circuit

3/3/86 NOTICE OF APPEAL on order of 2/25/86 re Claim of Law office Lawrence W. Erwin

3/4/86 NOTICE OF REFERRAL TO BAP #2 GR 86-1186 D.C. Fee Paid 87-74

3/4/86 TRANSMITTAL FORM Mandate USDC Affirmed 6/23/88 9th Cir.

3/4/86 Corres from Judge re hearing set for 4/25/86: Objections to Exhibit A Supplemental to be filed by 4/1/86 (see letter for details re any extensions

of deadlines)

3/7/86 APPEAL Motion to Dismiss appeal #1 by appellee and MOTION for ATTY FEES FOR FRIVOLOUS APPEAL

3/18/86 MEMORANDUM in Support of Request for Atty Fees Rule 11, Rule 9011 and 28 USC 1927 APPEAL #L & STATEMENT of Fees Requested

3/18/86 MEMORANDUM in Support of Motion to Refuse to Hear Interlocutory Appeal #1

?/?8/86 Brewer's RESPONSE to Creditor's Motion to Dismiss Appeal #1 (origin BAP sl)

?/??/86 Brewer's RESPONSE to Creditor's Motion to Dismiss Appeal #2

3/24/86 NOTIFICATION of Ordering of Transcript on Appeal #1

3/24/86 DESIGNATION OF RECORD and Statement of Issues #1

3/31/86 Correspondence Re: Attorney's Change of Address

3/31/86 Motion to Dismiss Appeal & Motion for Atty Fees (Second) #2

4/1/86 Trustee's and Brewer's Motion to Strike Based on Statute of Limitations

4/1/86 Trustee's and Brewer's Motion for Attorney's Fees and Costs

VOL. 10

4/1/86 Objections of Trustee and Brewer to Claim of Erwin & Erwin, P.C.

4/1/86 Memorandum of Law re Statute of Limitations eod 4/15/86

4/1/86 Affidavit of Charles Robinowitz eod 4/15/86

4/3/86 Motion to Require Plaintiff or His Attorney, or Both to Pay Reasonable Expenses (Lamb & Erwin)

4/3/86 Motion to Require Plaintiff or His Attorney, or Both to Pay

Reasonable Expenses (Erwin & Mullennex)

*4/7/86 (see below docketing re Appeal #2)

3/10/86 Corresp re: Correction to objections to Supplemental Exhibit of Erwin & Erwin

5/5/86 Response to Motion to Strike BA sed on Statute of Limitations EOD 5/13/ 86

5/5/86 Response to Motions to Strike and Make Definie EOD 5/13/86

5/22/86 Trustee's and Brewer's reply Regarding Statute of Limitations Defense

5/30/86 Response to Trustee's and Brewer's Reply Regarding Statute of Limitations Defense

7/7/86 Objection to Determination of Fact Regarding Statutue of Limitations (Atty for Trustee and Brewer)

1986 DOCKET NO. 383 01488 (Page 6 of

8/18/86 (4/21/86) ORDER DENYING MOTION OF APPELLEE TO DISMISS APPEAL or 861185 & TO GRANT ATTY FEES (Judge Frye) Appeal #1

======= (Appeal filed & docketed #1 on 8/25/86)

*4/7/86 Brewer's Answer to Creditor's Second Motion to Dismiss (Appeal #2)

4/7/86 Affidavit of Charles Robinowitz (Appeal #2)

4/7/86 Affidavit of Berverly A. Camp (Appeal #2)

8/28/86 Corres: requesting deferral of ruling on motion for judgment until Irwin responds to second ~~amended complaint~~ ($85-013122)??

See page Sic (6)

10/28/86 Filed and docketed for District Court. Briefing schedule pursuant to Rule 8009 (Approx

transmittal is January 21, 1987)

SEPT. 2 1) ORDER that this case is assigned to Judge FRYE n/b

19 2) ORDER that creditor's (Law Office of Lawrence W. Erwin, P.C.) mo to dismiss id DENIED. Motion for Attory fees is DENIED (FR) 9/8/86

23 3) ORDER-IT IS HEREBY ORDERED that the bankruptcu court's ord of July 24, 1986 dismissing the second claim for relief is AFFIRMED. (ntfd) e/m 9-30-86 S/9-29-86 RMC

29 4) JUDGMENT-IT IS HEREBY ORDERED & ADJUDGED that the decision of the Bankruptcy Judge is affirmed. (ntfd) e/m 9-30-86 S/9-29-86 RMC

10/22/86 TRANSCRIPT (PARTIAL) OF Proceedings February 3, 1986 (in Appeal) #2) D.C.

10/31/86 Application to Employ Attorney and Atty Certification & ORDER THEREON nunc pro tunc 10/21/86

1/26/86 Motion to Dispense with Monthly Rule 2015 Reports and Substituted Monthly Affidavits and ORDER

???? Hrg on amt of claim of Erwin & Erwin - Mon. Mar 3, 1987 and Tues, Ma 10, 1987 at 9:00 a.m. Ctrm #2

??????? ?/29/87 Hrg to Determine amount of claim of Erwin & Erwin Claim set for 3/9/87 & 3/10/87 RESET to 10:00 a.m. Mar 27, 1987 at 9:00 a.m. and April 3, 1987 at 9:00 a.m. Ctrm #2

?/2/87 Hrg to Determine amt of claim of Erwin & Erwin, Claim set for 3/27/87 & 3/30/87 RESET to Apr 2, 1987 at 9:00 a.m. and April 3, 1987 at 9:00 a.m. Ctrm #2

~~?/12/87 Hrg on obec, etc. set 3/27/87~~
~~RESET to Apr 27, 1987 at 9:30~~
~~a.m. CTrm #2~~ ??docket ??

?/13/87 Hrg set Wed, 4/2/87 OFF:Hrg begin Fri, Apr 3, 1987 and if not concluded, then Tues. Apr 7 at 9:30 a.m. set aside to complete hrg.

4/2/87 Motion for Continuance/Affidavit of Charles Robinowitz

4/3/87 Hrg to determine amt of claim of Erwin & Erwin set 4/8/87- OFF /Hrg to determine amt of Claim of Erwin & Erwin - May 18, 1987 at 9:00 a.m. Ctrm #2 /cont'd hrg to determine amt of claim of Erwin & Erwin - May 26 1987 at 9:00 a.m. Ctrm ?

~~6/5 /87 Affidavit of Lavelle Mullennex~~
nbs

???? Corresp from Charles Robinowitz' conrfirming hrg on May 18, 1987

and May 2?

5/28/87 Adj hrg on Claim of Erwin & Erwin - Jun 5, 1987 at 1:30 p.m. Ctrm #2

6/9/87 Closing argument re E & E Claims =-Jun 16, 1987 at 2:00 p.m. Ctr

~~6/8/87 Supplemental Affidavit of Fourth Claim for Relief, Count II~~ M?????nsw ????

6/9/87 Closing argument re E & E =-Jun 16, 1987 at 2:00 p.m. Crtrm #2

6/11/87 Affidavit of Lavelle Mullennex

7/2/87 AMENDED DISCLOSURE STATEMENT/ 6-30-87 Submitted by Debtor

7/2/87 PLAN OF REORGANIZATION 6-30-87 Submitted by Debtor

7/2/87 NOTICE OF HEARING ON)Aug 3, 1987 at 1:30 p.m.m Ctrm #2 PROPOSED CHAPTER 11) Written objections: 7/27/87 DISCLOSURE STATEMENT)

VOL 11

7/24/87 Objection of Trustee to Disclosure Statement

7/24/87 Objection of Suzan Brewer to Dislcosure Statement

7/31/87 Response of debtor to Objections to Disclosure Statement of Trustee

8/4/87 ORDER APPROVING DISCLOSURE STATEMENT AND FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN; AND NOTICE OF CONFIRMATION HRG) Sept. 21, 1987 at 1:30 p.m. Ctrm #2 Written objections/ballots: 9/2/87

8/13/87 PLAN OF REORGANIZATION 8/13/87 BY SUZAN BREWER, A CREDITOR

9/4/87 Ballot Summary

10/23/86 Filed and docketed for District Court. Briefing schedule pursuant to Rule 8009 (Approx transmittal is January 21, 1987)

12/2/86 Appellant's Brief

12/2/86 Appellant's Excerpt of Record

12/2/86 Appellee's Brief

1/5/87 Applt's Reply Brf

1987

JAN. 23 1) ORDER that this case is assigned to Judge Frye n/b CMC.

FEB. 27 2) ORDER-CONCLUSION- IT IS HEREBY ORDERED & ADJUDGED that the ord of the Bnakruptcy court allowing the claims of Lawrence Erwin in full is REVERSED IN PART & AFFIRMED IN PART. The claim by Lawrence Erwin for reasonable attys fees is REMANDED for further consideration by the bankruptcy court not inconsistent with this opinion. (ntfd) e/2/27/87 S/2-27-87 FR.

27 3) JUDGMENT- IT IS HEREBY ORDERED & ADJUDGED that the ord

of the Bankruptcy court allowing the claims of Lawrence Erwin in full is REVERSED IN PART & affirmed in part. The claim by Lawrence Erwin fro reasonable attys fees is REMANDED for further consideration by the bankruptcy court not inconsistent with this opinion. (ntfd) e/2/27/87 S/2-27-87 FR

MAR 9 4) Mot for recosideration, memo

9 5) REC OF ORD- setting appellant's mot for reconsideration on Judge Frye's M/C 4-13087, NOA. n/b FR. FR(MC4-13-87) ntfd

16 6) Creditor, Law Office of Lawrence W. Erwin, P.C. -Re ponse to mot for reconsideration. c/ FR.

19 7) Request for expedited determination of appellant's mot for reconsideration C/FR.

20 8) REC OF ORD- granting exp. consideration. ORD-striking if from the M/C 4-13-87. ORD-denying appellant's mot for reconsideration. n/b FR.

26 9) NOTICE OF CROCSS APPEAL BY SUSAN BREWER- Notc is hereby given that Susan Brewer, objector, cross appeals to the U.S. Court for the 9TH CIRCUIT from the order and jdgmnt of the U.S.D.C.for the District of Oregon 2-27-87.

26 (()$5.00 USDC filing fee pd., $65.00 C?A filing fee pd.

26 (()Mailed Notc of Appeal to C?A and Cnsl.

27 10) NOTICE OF APPEAL by Law office of Lawrence W.Erwin, P.C. creditor above-named, appeals to the U. S. Court of Appeals for the Ninth Circuit from the ord

and jdgmnt of the U.S.D.C. for the District of Oregon entered in this action on the 27th day of February, 1987.

27 (() $5.00 USDC filing fee pd., $65.00 C/A filing fee pd.

27 (() Mailed Notc of Appeal to C?A and Cnsl.

APRIL 7 11)Transcript designation and Ord form-hrg 2-3-86 ordered. (Pltf-appellee)

8 12)/Transcript designation and Ord form -hrg 2-3-86 ordered. (Deft-appellant)

13 13)Transcript designation and Ordering form--hrg 2-3-86 ordered. (Deft-appellant)

20 14)Applt's designation of Clerk's Record

MAY 4 15)ORDER-exempting case from pre-briefing conf. program.

JULY 6 16) ORDER- Susan Brewer's mot fro

an ord req. creditor to file a supplemental excerpt of record is granted in part. Brewer's mot to delete the reporter's transcript from thr excerpt of record is referred to the panel that considers these appeals on their merits

9/9/87 Motion of Trustee and Suzan Brewer for stay and hearing to determine trustee's claims for indemnity and subordination (Oral argument Requested)

9/11/87 Hrgset 10-/13/87 RESET to Sept. 21, 1987 at 1:30 p.m. Ctrm #2

9/14/87 Application of Debtor for Cram-down - Confirmation of Plan

9/14/87 Motion of Suzan Brewer to Allow Objections of Brewer to Debtor's Plan of Reorganization and to Allow Inspection of Debtor's Real Property (Request for Oral

Argument)

9/14/87 Brewer's Objections to Proposed Reorganization Plan

9/25/87 Certificate of Service - Subpoena to Witness - Records Custodian, Wells-Reed-Wood et al

10/13/87 Corres. re hearing on various motions RESET 10/13/87 to 12/22/87 9:00 a.-12:00 Noon - Ctrm. #2

9/28/87 Correspondence Re: Attorney for Debtor's Change of Address (eod 10/14/87)

10/26/87 Motion for Debtor for ORder to Fix Time in Which to Submit Administrative Claims, Claims for Attorneys' fees

10/23/87 ORDER Fixing Time in which to submit Administrative claims.

11/5/87 Affidavit of Service of Order fixint time in which to submit Administrative

11/20/87 Motion of Charles Robinowitz for Attorney's Fees and Costs/ Affidavit of Charles Robinowitz

VOL 12

11/20/87 Motion of Charles Robinowitz for Attorney's Fees and Costs/ Affidavit of Charles Robinowitz

11/20/87 Objection of Suzan Brewer to Fees of Lawrence W. Erwin

11/20/87 Motion of Trustee and Brewer for Stay of Confirmation Order

11/20/87 Notice of Substitution of Representation-Janet M. Briggs

12/1/87 Hrg on Motion for Stay of Conafirmation Order, the Motion for Atty Fees and Costs (Lawerence Erwin), Motion for Atty's Fees and Costs (WArde Erwin) and Objections to fees of Lawrence W. Erwin, Dec. 22, 1987 at 9:00 a.m. Ctrm #2

12/10/87 Response to Application for

Fees for Charles Robinowitz (Claims of L. Mullennex and W. Erwin)

12/10/87 Objection to Claims of John Durkheimer's Employment Application

12/10/87 Objection to Claim of Benj. Franklin Federal Savings & Loan Association

12/11/87 Opposition to Petition for Allowance of Attorneys' Fees of Bogle & Gates - Neihaus, Murphy - Jament M. Briggs

12/11/87 Opposition to Motion for Stay of Confirmation ORder and to Fix Supersedeas Bond of $175,000

12/11/87 Opposition to Motions for Attorneys' Fees and Costs of Charles Robinowitz, Attorney for Suzan Brewer

12/11/87 Opposition to Application for

Allowance of Trustee's fees and Reimbursement of Expenses

12/11/87 Objection to Application for Attorneys' Fees of sussman, Shank, Wapnick, Caplan 7 Stiles, John H. Durkheimer

12/10/87 Opposition of Certain Creditors to Application for Stay During Appeal

12/11/87 Answer to Request for Fees & Costs of Charles Robinowitz

12/18/87 Affidavit of John H. Durkheimer

12/18/87 Response to Objections to Application for Attorneys' fees

12/18/87 Response to Objection to Application for Rees of John B. Franzwa

12/30/87 ORDER Granting Motion to Continue Hearing on Requests for Sanctions and Motion to Admit Attorney Pro Hoc Vica

DEC. 30 ()) ORDER (from C/A) - John B. Franzwa, Inc., and Susan Brewer's mot to consolidate appeals 86-4386, 87-3674 & 87-3690, and 87-3754 for hrg is GRANTED. Appeal 86-4386 is removed from the Portland Calendar for 1/6/88, and will be rescheduled with cross appeals 87-3674 & 87-3690 and 87-3753 & 87-3754, on the next available Portland Calendar.

1988

JUN 23 ()) MANDATE USDC affirmed (87-3753,87 3754 C/A), memo (not for publication)

MAR 31 88 NOTICE; ALL DOCKET ENTRIES AFTER THIS ENTRY ARE ELECTRONCIALLY DOCKETED ON BANCAP ?

Filing Date	Judge	Dist Off	Yr	No
05 0488	A 217 Hess	0979 3	83	01488-H

PLAINTIFFS	DEFENDANTS cv 88 816 MA
MARQUAM INVESTMENT CORP.	CHARLES ROBINOWITZ
Debtor-Appellant	Appellee

CAUSE APPEAL #1

APPEAL TO DISTRICT COURT from an ORDER of March 25, 1988 allowing administrative expense (Charles Robinowitz), MARQUAM INVESTMENT CORP., Case #383-01488-H11

ATTORNEYS

Lawrence W. Erwin	Charles Robinowitz aa 30
Babb, Avedovech & Erwin	1211 S.W. Fifth Avenue #2962
P. O. Box 8, 315 N.W. Greenwood	Portland, Oregon 97204
(503) 389-1010	(503) 226 1474
Atty. for Debtor/Appellant Marquam Investment Corp.	Appellee & Atty. for creitor Suzan Brewer & trustee John B. Franzwa, Inc.
Charles Erwin(B)66	John D. Durkheimer aa"
3323 S.W. Harbor	Sussman, Shank,Wapnick

Drive	et al
Portland, Oregon	1111 Orbanco Building
(503) 226-4525	1001 S.W. Fifth Avenue
Atty. for creditor Lavelle Mullennex, Warde H. Erwin, & Erwin & Erwin, PC	Portland, Oregon 97204 (503 227-1111 Atty./ for John B. Franzwa

---

3/25/88	Order Denying Application for Administrative Expenses (Benj. Franklin)
3/25/88	ORDER Allowing Administrative Expenses (Trustee)
3/25/88	ORDER Allowiing Administrative Expense (Babb, Avedovich & ERwin) Appeal (See Adv. po 85 131 Affirmed
3/25/88	ORDER Allowing Administrative Expense (Sussman, Shank)
3/25/88	ORDER Allowing Claim of Erwin & Erwin Appeal
3/25/88	ORDER Allowing Administrative

Expense (Charles Robinowitz)
Appeal 88-816-MN - Reversed

3/25/88 Conditional ORDER Granting Stay of Confirmation Order

3/25/88 ORDER Confirming Plan Appeal

3/31/88 Notice of ORDER Confirming Chapter 11 Plan and Discharge

4/04/88 (1) NOTICE OF APPEAL of Order of 3/25/88 Allowing Adm. Exp of Robinowitz DC 88 816 MA
DC Reversed 10/14/88

4/06/88 (2) NOTICE OF REFERRAL of Appeal to BAP

4/6/88 (3) Corres: re Rule 806 & ordering of transcript

4/14/88 (4) Appellant's Designation of Contents of Record and Statement of Issues on Appeal

4/14/88 (5) Notification of Ordering of Transcript on Appeal

4/14/88 (6) Objection to Referral to Bankruptcy Appellate Panel

5/3/88 (7) EXCERPT TRANSCRIPT OF PROCEEDINGS, December 22, 1987 (Hearing on Miscellaneous Motions) on Adv. #85-0131-H (in appeal file)

---- -- -- Appeal eod 4/4/88 from order of 3/25/88 filed & docketed for District Court on 5/4/88 (approx transmittal 7/28/88)

6-30-88 ORDER re: Susan Brewer and the trustee agree to dismiss all of their pending claims for sanctions against Erwin & Erwin,P.C., Warde Erwin and Lavelle Mullenex with prejudice and without costs

----- ----APPEAL from order of 3/25/88 transmitted to DC on 7/20/88 (MA)#10/12/88 Affidavit of Lavelle Mullennes for September 1988 (See 2015 Rep)

10/24/88 Statement of Costs and Disb.(US
VOL 13 District No. 88-816

2/13/89 TRANSCRIPT OF PROCEEDINGS, May 6, 1985 (to DC 5/3/89)

VOL 14 - - - - - - - - - - - - - - - - - -

3-10-89 Application by Trustee, John B. Franzwa, to Employ Leasing Agency and ORDER Thereon; and Notice of Intent to Compensate Agency (Served: MAR 14 1989)

5/4/88 (8) Appeal filed and docketed for District Court, Briefing Schedule

6/03/88 (9) BRIEF FOR APPELLANT

6/03/88 (10) APPELLANT'S EXCERPT OF RECORD

7/05/88 (11) APPELLEE'S BRIEF

7/05/88 (12) APPELLEE'S SUPPLEMENTAL EXCERPT OF RECORD

JUL 22 13) NOTC OF ASSIGNMT to MA CMC a/b

28 14) REc of ord: setting hrg on appeal from 3/24/88 ord allow-

ing administrative expenses before Judge M Marsh thursday 8/11/88 at 1:30 pm. MA n/b

AUG 4 15) Appellee's response to supplemental authority.

8 16) Rec of ord: resetting Thursday, 8/11/88 time for hrg appeal from 3/24/88 ord allowing administrative expenses from 1:30 to 4:00 pm. MA n/b

19 17) Rec of ord restting hrg on appeal from 3/24/88 ord allowing admin expense before Judge Marsh Wed 10/12/88 at 9 am. MA ntfd <MC 10/12/ 88>

10/12/88 18 Rec of h rg: J.Hess's order allowing administrative expenses is REVERSED. The Court grants attorney Robinowitz leave to resubmit administrative expenses petion to Judge Hess under the correct statu-

tory provision. MARSH

10/14/88 19 JUDGMENT. IT IS ORDERED AND ADJUDGED Judge Hess's order allowing administrative expenses petition to Judge Hess under the correct statutory provision. MARSH

10/ 24/88 20 STATEMENT OF COSTS AND DISBURSEMENTS

11/01/88 21 OBJECTION TO COST BILL

U. S. Bankruptcy Court

District of Oregon (Portland)

Bankruptcy Petition #: 83-31488

Date filed: 5/4/83

Assigned to: Judge Henry L. Hess, Jr

Cahpter 7 voluntary

==========*Attorneys*

MARQUAM INVESTMENT CORP. LAWRENCE W. ERWIN

3323 SW HARBOR DR POB 8

PORTLAND, OR 97201 BEND, OR 97709

SSN: 930478481 389-1010

*Debtor *

JOHN B FRANZWA, Trustee
7425 SW Chapel Ct
Portland, OR 97223
Trustee

JOHN H DURKHEIMER
520 SW YAMHILL #800
PORTLAND,OR 97204
226 6151

JEROME B SHANK
1000 SW BROADWAY
#1400
PORTLAND,OR 97205
227-1111

Proceedings include events between 1/1/1 and 4/17/92

4/1/89 -- ****SEE VOLUME 14 ****(pdr)
<EOD 04/25/89)

4/27/89 1 Transcript of Hearing held on April 12, 1985 re claims (eal)

9/12/89 2 MOTION by Debtor MARQUAM INVESTMENT CORP. for Relief From Stay and To Amend Plan by MARQUAM INVESTMENT CORP. . (nb)
<EOD 09/23/91>

9/19/91 3 Certificate of Service by

LAWRENCE W ERWIN for Debtor
MARQUAM INVESTMENT CORP. Of
<2-1> Motion for Relief From
Stay and to Amend Plan (nb)
<EOD 09/23/91)

Docket as of April 17, 1992 88:00 pm

Proceedings include events between 1/1/1 and 4/17/92.

83-31488 MARQUAM INVESTMENT CORP. V.

9/26/91 4 NOTICE of HEARING Re: <2-1> Motion for Relief From Stay and to Amend Plan by MARQUAM INVESTMENT CORP. Scheduled For 1:30 10/15/91 Via Telephone Conference (ckn)

10/7/91 5 JUDGMENT ORDER On Costs Erwin & Erwin PC) (pdr)

10/8/91 6 NO OF HEARING Re: <2-1> Motion For Relief From Stay and To Amend Plan by MARQUAM INVESTMENT CORP. Scheduled For

1:30 10/15/91 Via Telephone Conference (ckn)

10/16/91 7 ORDER - Dismissing Appeal by USDC Judge Redden (re: Order Confirming Plan entered 3/25/88 - Notice of Appeal filed 4/4/88) (ljh) <EOD 10/21/91>

10/23/91 - HEARING Re: <2-1> Motion for Relief from Stay and To Amend Plan by MARQUAM INVESTMENT CORP Sched For 2:30 11/4/91 at Courtroom #2, Portland (pdr)

10/23/91 8 Supplemental Exhibit By Debtor MARQUAM INVESTMENT CORP. In Support Of Motion to Terminate Stay and To Motion To Waive Further Disclosure Statement (nb) <EOD 10/25/91>

10/23/91 9 ORDER by USDC Judge Redden (CV 88-915-RE) - Order of Dismissal of Appeal (10/16/91) is set aside - matter is stayed

pending status letters by 11/15/91 - see also appeal file. (ljh) <EOD11/o1/91>

11/15/91 10 NOTICE of Sell Real Property <EOD 11/18/91>

11/15/91 11 MOTION By Debtor MARQUAM INVESTMENT CORP. for Authority to Sell Property Free and Clear of Liens and Notice of Hearing Thereon Hearing Scheduled for 1:45 12/1o/01 Via Telephone Conference (nb) <EOD 11/18/91>

11/22/91 12 OBJECTION By Creditor Suzan Brewer To Proposed Order Re <11-1> Motion to Sell Property Free and Clear of Liens by MARQUAM INVESTMENT CORP. (pdr) <EOD 11/25/91>

11/27/91 13 OBJECTION by Trustee John B Franzwa to <11-1> Motion to Sell Property Free and Clear

of Liens by MARQUAM INVESTMENT CORP. . (pdr)

11/27/91 14 OBJECTION by Creditor Suzan Brewer To <lo-1> Notice of Sale (nb) <EOD 11/29/91>

12/12/91 15 ORDER Setting Aside Confirmation Plan and Releasing Security to Charles Robinowitz by USDC Judge Redden (CV 88-915-RE) . (ljh) <EOD 12/30/91>

1/23/92 16 NOTICE of Intent to Sell Property (Lots 1, 2, 3, E 1/2 of 4 & 6 of Block 1128, Caruthers Addition, Multnomah County, OR) At Private Sale and Compensate Real Estate Broker (if ?Any) (pdr)

1/28/92 17 OBJECTION By Creditor Warde H. Erwin <16-1> Notice of Sale And Sale Of Property (pdr)

1/31/92 19 MEMORANDUM by Creditor Warde H. Erwin (pdr) <EOD 02/05/92>

2/3/92 18 OBJECTION by Debtor MARQUAM INVESTMENT CORP. to <16-1> Notice of Sale By Trustee (pdr)

2/4/92 20 OBJECTION By Creditor Warde H Erwin To Notice Of Hearing On Motion to Convert (pdr) <EOD 02/05/92><Edit date 02/05/92>

2/7/92 21 OBJECTION By Creditor Suzan Brewer To <16-1> Notice Of Sale Of The Property (pdr) <EOD 02/11/92>

2/7/92 -- ****SEE VOLUME 15****(pdr) <EOD 02/28/92>

2/13/92 22 NOTICE of Intent to Sell Property At Private Sale And Compensate Real Estate Broker (if any) (pdr)

2/24/92 23 NOTICE of Intent to Sell Pro-

perty At Private SAle And Compensate Real Estate Broker (if any) (nb)

2/25/92 24 OBJECTION By Creditor Lavelle Mullennex To <23-1> Sale Notice . (pdr) <EOD 2/28/92>

2/25/92 25 OBJECTION by Creditor Warde H Erwin To <23-1> Sale Notice (pdr) <EOD 02/28/92>

e

2/25/92 26 OBJECTION By Creditor Suzan Brewer To <23-1> Sale Notice (pdr) <EOD 02/28/92>

2/26/92 27 OBJECTION By Debor MARQUAM INVESTMENT CORP. To <23-1> Sale Notice (pdr) <EOD 02/28/92>

3/19/92 28 NOTICE OF HEARING Re: <27-1> Objections to Trustee's Notice of Intent to Sell Property by MARQUAM INVESTMENT CORP <26-1>Suzan Brewerr <25-1> Warde H Erwin <24-1>

Lavelle Mullennex Scheduled for 9:30 4/14/92 at Courtroom #2, Portland (ckn)

3/24/92 29 ORDER Withdrawing, Converting to 7, And Remanding To Bankruptcy Court (Signed by District Judge James A Redden) (pdr) <EOD 03/27/92>

3/27/92 30 Notice of ORDER <29-1> Converting A Chapter 11 Case To A Case Under Chapter 7; ORDER Re: Document Filing; Trustee Appointment (John B Franzwa Inc). Conversion Documents Due: 4/8/92;; Show Cause Hearing: 4/21/92 10:30 am Courtroom #2. (pdr)

3/27/92 31 OPINION by USDC Judge Redden, Re: Withdrawal of Reference Conversion (CV 88-915-RE) (ljh) <EOD 03/31/92>

Docket as of April 17, 1992 8:00 p.m.

Page 3

Proceedings include events between 1/1/1 and 4/17//92.

833-313488 MARQUAM INVESTMENT CORP. v

4/1/92 32 Application By Trustee John B Franzwa To Re-Employ Real Estate Agent, Realty Group Inc on basis previously approved AND ORDER THEREON (sl)

4/1/92 33 APPLICATION AND ORDER THERE-ON. Moation By Trustee John B Franzwa, To Shorten Notice Time to 7 days (sl)

4/2/92 34 NOTICE of Offers Received Prior to Conversion of Case from one under Ahpter 11 to Chapter 7 and Intended Private Auction. Service Date: 4/1/92 (7 days objection) (sl)

4/7/92 35 Affidavit for February 1992.

Filed by Lavelle Mullennex, Secretary of the Debtor Corporation (sl)

4/8/92 36 MOTION Aby Creditor Warde H Erwin Regarding Order filed March 27, 1992 (sl) <EOD 04/14/92>

4/14/92 37 Application By Trustee John B Franzwa To Employ Attorney Jerome B ShankAttorney Certification AND ORDER THEREON (sl)

8/25/86 Filed and docketed for District Court pursuant to Rule 8009 (Forward to District Court on November 21, 1986)

9/24/86 MOTION for Extension of Time To File Brif and ORDER 10/25/86)

10/1/86 TRANSCRIPT of hearing of February 3, 1986 (Partial)

10/28/86 Appellant's Brief

11/14/86 Appellee's Brief

11/14/86 Appellant's Reply Brief

12/3/86 1) Note of asgnmt to Judge Frye per CMC ntfd

1/20/87 2) AORDER-ORD that the ord of the bktcy ct allowing the clms of Erwin & Mullennex is REVERSED. The appellant's req for atty's fees is DENIED. This matter is remanded to the bktcy ct for further proceedings. s FR 1/30/87 e/m 2/3/87 ntfd

2/2/87 3) JUDGMENT_ORD that this

action is remanded to the bktcy ct for further proceedings. s FR 2/2/87 e/m 2/3/87 ntfd

2/17/87 4) Notc of appeal by DEfts Erwin and mullennex from Judgment of 2/2/87

()) $70.00 fee pd receipt #55925

2/19/87 5) T/P Design by appellant (2/3/86)

2/24/87 ()) Cert of record mailed to C/A & all cnsl

3/4/87 ()) Notc of Cross Appeal by Brewer

3//4/87 6)Mot of objector Susan Brewer to ext time for Brewer to file x-appeal (to FR)

3/4/87 7) Affid of Charlees Robinowitz (to FR)

3/5/87 8) Creditors' objns to Brewer's mot for ext of time to file x-appeal (c-FR)

3/5/87 9) Cert of svce by mail for #6

3/6/87 10) Rec of ord granting objector's mot to ext time for Brewer to file x-appeal till 3/18/87 FR ntfd

3/9/87 11) Notc of cross appeal by Brewwer from judgment 2/2/87

() $70.00 fee pd receipt #53630

() Notc of appeal mailed to C/A & cc to all cnsl

19 12) Designation of reporter's transcript (none)

25 () Cert of record mailed to CC/A & cc to all cnsl

4/9/87 13) ORDER EXEMPTING CASE FROM PREBRIEFING COMP PROGRAM

4/9/87 14) Appeallants design of record

JUNE 1 15) C/A ORD Suzan Brewer's mot x/ time to file ans brief & clarify brief shced granted. Brewer file 2nd brief on cross appeal 6/3/87. Erwin & Mullenex file reply ans

brief w/in 30 days from serv.

20 16) ORDER-Appellee's mot to require appelleants to suplmnt their excerpt of record to include a copy of their clm in the bktcy ct is granted. W/in 14 days from the entry of this ord, appellants shall file in this ct 5 copies of their clm C/A

DEC 30 17) ORDER-Mot to consolidate Adv 85-013) appeal 86-4386, 87-3674 , 87-3690, 87-3753 & 87-3754 is GRANTED. C/A

1988

JUNE 23 ()) MANDATE-ORD the judgment of the D.C. is affirmed C/A ntfd